

INSURANCE

Dave Heineman
Governor

Ann M. Frohman
Director

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A Message from the Director....

As a member of the international and reinsurance committees of the NAIC, I have taken a strong interest in the success of state regulation and the keen pressures of international activities upon this task.



Ann M. Frohman

State insurance regulators, like the rest of the world, have watched in amazement as the financial markets collapsed in the last months. Starting with the failure of auction rate securities in February 2008, to the subsequent downfall of Lehman Bros., systemic risk created in the counterparty exposures on credit default swaps, and now the sheer volatility in securities lending practices, many insurance groups face financial uncertainties in the capital markets.

In the coming months, we will see new regulatory proposals for regulation of financial markets on Capitol Hill. The challenge of our leaders will be in understanding the complexity of oversight necessary, not only for currently known financial instruments, but for the unknown instruments yet to be developed.

Do state insurance regulators have a role? Absolutely. With reinsurance modernization well underway at the NAIC, Congressional legislation proposed to create a federal office of insurance information for international trade matters implicating insurance, and a new federal group-wide supervision model yet to be developed, state insurance regulation will continue to serve an important role in this new environment. Upon implementation of these measures, the wisdom of state oversight of insurance is one that can succeed to serve U.S. policyholders with unmatched protection in a global environment.

(continued on next page)

(Message from Director continued)

Whether we succeed globally will depend on whether we create a new set of regulatory models that are fluid, adaptable and equally capable of analyzing innovative financial instruments that may not fit mainstream functional regulation. Like certain derivatives that have fallen through regulatory cracks today, we know that legislation can't be crafted to address all financial instruments, especially those not yet anticipated. Therefore, any regulatory models will need to empower regulators with the ability to assess on a continual basis future financial instruments, however designed. This is the federal oversight challenge. We must be able to assure that all capital market instruments, beyond securities, insurance and banking, are analyzed for systemic capital market contagion. This is not simply a reform of the U.S. financial regulatory system but is one that will require an intense coordinated global effort. It is time we all welcome international regulatory cohesion and I call on you to be the leaders in setting the bar high.

PRODUCER LICENSING DIVISION

New or Updated Marketing Rules Effective October 1, 2008

The Centers for Medicare and Medicaid Services (CMS) has recently announced new or updated marketing rules for those involved in the sale of PDP, MA-PD, MA, CCP, PFFS, RPPO, MSA, HCPPs, EGWPs and Cost Plans. Producers and brokers may want to pay particularly close attention to these changes since they have already become effective as of October 1, 2008.

Some of the major changes for marketing purposes include:

- Plans may offer gifts to potential enrollees as long as such gifts are of nominal value and are provided whether or not the individual enrolls in the plan. Nominal value currently is defined as an item worth \$15 or less, based on the retail purchase price of the item regardless of the actual cost.
- Plans and any downstream contractors are prohibited from door-to-door solicitations and other instances of unsolicited contacts that may occur outside of advertised sales or educational events.
- For those circumstances where outbound calls are permitted, outbound scripts must be submitted for review and approval prior to use in the marketplace. Scripts must include a privacy statement clarifying that the beneficiary is not required to provide any information to the plan representative and that the information provided will in no way affect the beneficiary's membership in the plan.

- Plans may not market non-healthcare-related products, such as annuities and life insurance, to prospective enrollees during any Medicare Advantage Organization (MAO) or Prescription Drug benefit program (PDP) sales activity or presentation.
- Plan marketing representatives must clearly identify the types of products that will be discussed before marketing to a potential enrollee.
- Prior to any marketing appointment, the beneficiary must agree to the scope of the appointment and that agreement must be documented or recorded by the plan.
- Plans may not conduct sales activities in healthcare settings except in common areas.
- Educational events may not include sales activities, such as the distribution of marketing materials or distribution or collection of plan applications.
- Plans are prohibited from using names and/or logos of co-branded network partners on membership plan identification cards and must include a disclaimer on other marketing materials that include and logos of co-branded network partners.
- Plans may not provide or subsidize meals for prospective enrollees at any event or meeting at which plan benefits are being discussed and/or plan materials are being distributed.
- Plans that conduct marketing through independent agents must use state-licensed, certified, or registered individuals. Both independent agents and internal sales staff that perform marketing must be licensed and appointed.
- Plans must report the termination of any brokers or agents and, if required by state law, the reason for the termination to the state in which the broker or agent has been appointment by law.
- Plans must ensure that brokers and agents selling Medicare products are annually trained on Medicare rules, regulations, and plan details specific to the plan products being sold by the brokers and agents. MAOs and Part D Organizations must also ensure that brokers and agents selling Medicare products are tested annually on their knowledge of Medicare rules and regulations, as well as on the plan specific details of the plan products being sold.
- Plans must establish limits on agent and broker compensation, consistent with CMS guidance, to ensure that agents and brokers enroll individuals in the MAO or PDP plans that are intended to best meet the beneficiary's health care needs. These compensation rules are designed to minimize churning.

Questions concerning these new or updated rules can be directed to Martin Swanson, Counsel, at martin.swanson@nebraska.gov.

Krystal Lanning has joined us and is responsible for processing continuing education and prelicensing certificate filings, course sponsor updates, and approved course updates.

Staff Update

Krystal Lanning has joined the Department's Producer Licensing Division. Krystal is responsible for processing continuing education and prelicensing certificate filings, course sponsor updates, and approved course updates.

New Licensing and Continuing Education Forms

The Producer Licensing Department has updated forms for CE Providers, Producer Licensing, and Agency Licensing. Please visit our website at www.doi.ne.gov under the Producer dropdown and download the updated forms for your records.

Instructions for Continuing Education Providers

When submitting a course for approval, please submit the following:

- NAIC Uniform Continuing Education Reciprocity Course Filing Form (in duplicate)
- Home State Approval, if available
- Detailed Course Outline
- \$50 Course Filing Fee

Updated Producer Licensing Fee Reminder

Please submit the appropriate fees for producer licensing requests. All initial and renewal, nonresident and resident licensing fees are \$60. There is no longer a \$5 or a \$10 filing fee for prelicensing, continuing education, or an amended license.

A listing of all new fees is located on our website at www.doi.ne.gov.

When submitting a course for approval, please be sure to submit the NAIC Uniform Continuing Education Reciprocity Course Filing Form in duplicate.

Please submit the appropriate fees for producer licensing requests from the new fees listed on our website at www.doi.ne.gov.

CONSUMER AFFAIRS DIVISION

Insurers Reminded to Verify Performance of Third Party Reviewers of Annuity Suitability

The Act requires an insurance producer to have reasonable grounds to believe that a recommendation to purchase or exchange an annuity is suitable for the consumer.

The Nebraska Protection in Annuity Transactions Act (Act) requires an insurance producer to have reasonable grounds to believe that a recommendation to purchase or exchange an annuity is suitable for the consumer. The insurer, in turn, is required to establish a system to supervise producer recommendations to achieve compliance with the Act.

An insurer may contract with a third party to establish and maintain a system of supervision with respect to insurance producers under contract with or employed by the third party. However, the insurer must make reasonable inquiry to assure the third party is performing the required supervisory functions, and must also take action necessary to enforce the third party's contractual obligation.

The insurer must make reasonable inquiry to assure the third party is performing the required supervisory functions, and must also take action necessary to enforce the third party's contractual obligation.

The obligation to make reasonable inquiry can be met by obtaining annual certification from a third-party senior manager that the third party is performing the required functions, and by periodically selecting third parties – based on reasonable selection criteria – to determine whether they are performing the required functions. This does not mean that an insurer must review all insurance producer transactions or supervise an insurance producer's recommendations to consumers of products other than its own.

Do not hesitate to contact the Consumer Affairs Division for assistance, if you have questions regarding company obligations under the Nebraska Protection in Annuity Transactions Act.

Any questions concerning the Act should be directed to the Department's Consumer Affairs Division.

The Consumer Affairs Division may be reached at:

Department of Insurance
941 O Street, Suite 400
Lincoln, Nebraska 68508

Phone: 402-471-0888
Facsimile: 402-471-6559
E-mail: consumer_affairs@doi.state.ne.us

FRAUD DIVISION

Tools in Combating Insurance Fraud

The definition of money laundering was taken literally by two robbery suspects in Lincoln, Nebraska recently. The suspects had robbed a financial institution which utilized a “dye pack” to discolor their ill-gotten proceeds.

A Crime Stoppers tip led police to the two suspects who had recently “laundered” their money and hung it out to dry. Two excellent crime fighting techniques were utilized to bring these offenders to justice in the utilization of dye packs as well as the organization of Crime Stoppers.

Techniques can be utilized within the insurance industry as well to combat insurance fraud. Both aspects of insurance fraud, external and internal, need to be addressed. The Insurance Fraud Prevention Division (IFPD) has investigated both types of losses.

There are various tools and training available to review and identify losses due to external claims fraud. Does your company have a system in place to identify fraud indicators? If so, is there a method of review and referral in place? To deny a fraudulent claim alone does little in combating insurance fraud. Insurance fraud is a progressive crime with perpetrators often conducting ongoing activity.

Internal fraud affects every aspect of business including the insurance industry. Safeguards have often been implemented by companies left only to stagnate over time. A safeguard in the form of an audit system for example must be consistently tested to determine how the safeguard can be compromised.

The IFPD recently received a case involving a claims handler who had discovered a flaw in the claims process. The flaw allowed the claims handler to issue payments to an alleged vendor for specialized services. Only when another claims handler inherited the files was it discovered the tax identification number did not correspond with the vendor. If there is a flaw in the system, it will be discovered. Hopefully, that discovery will be by the company.

The IFPD is authorized to investigate and prosecute all lines of insurance fraud perpetrated by the insurer, agent, insured, or any other individual. To report insurance fraud, contact the IFPD at:

Nebraska Department of Insurance
Insurance Fraud Prevention Division
941 O Street, Suite 400
Lincoln, NE 68508

Facsimile: 402-471-8335
E-mail: fraudprevention@doi.state.ne.us
Website: www.reportinsurancefraud.ne.gov

PROPERTY & CASUALTY DIVISION

Ordinance or Law Insurance

Ordinance or Law coverage is a coverage that is rarely added to policies and often not even mentioned as something that insureds should consider when reviewing their insurance programs.

A coverage that is often needed by insureds is Ordinance or Law coverage. We are finding that it is also a coverage that is rarely added to policies and often not even mentioned as something that insureds should consider when reviewing their insurance programs.

Anyone involved with property policies is encouraged to make insureds aware that most contracts do not automatically cover all costs necessary to bring a building up to current code.

Building codes are constantly reviewed and changes are often made. These changes may reflect new requirements for wiring, construction, fire safety and plumbing as examples. Often times, a property that is older may suffer a loss—and only after the loss does the insured discover that different standards now exist that must be met in order to meet the current city/county codes. This could result in an increase in not only the building material but also in the labor necessary to correct to meet the new code. This could affect both personal and commercial property policies. We encourage anyone involved with property policies to make insureds aware that most contracts do not automatically cover all costs necessary to bring a building up to current code. There may be limitations or exclusions that should be pointed out to the insured along with the options for making coverage available for additional costs.

Market Availability

To assist the director in monitoring competition and the availability of insurance in commercial markets, a “market availability” survey has been sent to a cross section of producers throughout the state asking questions about the availability of coverage for certain lines and certain classes of insurance.

Section 44-7505 of the Nebraska statutes states that the director shall monitor competition and the availability of insurance in commercial markets. Over the year, we have sent a “market availability” survey out to a cross section of producers throughout the state asking a series of questions about the availability of coverage for certain lines of insurance as well as certain classes of insurance. As of this date, the survey has gone out three different times. The fourth will be going out in the next few days. Each time the surveys were sent, we tried to make sure we had a group that represented most areas of the state.

We would like to take this opportunity to thank those whom have taken the time to respond. Your input in letting us know the markets that are available, as well as those that are not, gives us a better understanding of what is available to Nebraska insureds.

LEGAL DIVISION

Recently Enacted Regulations

210 NEB. ADMIN. R. & REG. 19 – REPLACEMENT OF LIFE INSURANCE AND ANNUITIES

The Replacement of Life Insurance and Annuities Regulation regulates the activities of insurers and producers with respect to the replacement of life insurance and annuities. The Regulation protects the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by assuring that the purchasers receive information with which a decision can be made in his or her own best interest, reducing the opportunity for misrepresentation and incomplete disclosures, and establishing penalties for failure to comply with the requirement of the regulation. Adopted amendments to the regulation reflect the changes made upon the National Association of Insurance Commissioners (NAIC) model regulation. The regulation was filed with the Secretary of State on June 23, 2008, with an implementation date of October 1, 2008.

210 NEB. ADMIN. R. & REG. 33 – SOLICITATION OF LIFE INSURANCE

The Life Insurance Solicitation Regulation requires insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance. The regulation now requires certain information be adequately disclosed at the time an application is made, prior to accepting the applicant's initial premium or deposit, for a preneed funeral contract or prearrangement that is funded or to be funded by a life insurance policy. Adopted amendments to the regulation reflect the changes made upon the National Association of Insurance Commissioners (NAIC) model regulation. The regulation was filed with the Secretary of State on June 23, 2008, with an implementation date of October 1, 2008.

210 NEB. ADMIN. R. & REG. 40 – UNIVERSAL LIFE INSURANCE

The Universal Life Insurance Regulation supplements existing regulations on life insurance policies in order to accommodate the development and issuance of universal life insurance plans and encompasses all individual universal life insurance policies, except those policies listed in Subsection 002.19 of the Variable Life Insurance Rule. The regulation provides the minimum standard for universal life insurance policies shall be the Commissioners Reserve Valuation Method and sets forth that the minimum cash surrender values for flexible premium universal life insurance policies shall be determined separately for the basic policy. Additionally, the regulation states that all universal life policies must provide periodic disclosures, notice of current illustrations, guarantees of minimum interest credits, a general description of the calculation of cash surrender values, and if the policyowner has the right to change the basic coverage, any limitation on the amount and timing

of such change. Adopted amendments to the regulation reflect the changes made upon the National Association of Insurance Commissioners (NAIC) model regulation. The regulation was filed with the Secretary of State on June 23, 2008, with an implementation date of October 1, 2008.

210 NEB. ADMIN. R. & REG. 44 – SCOPE OF COVERAGE TO BE OFFERED BY THE NEBRASKA COMPREHENSIVE HEALTH INSURANCE POOL

The Scope of Coverage to be Offered by the Nebraska Comprehensive Health Insurance Pool regulation was amended to change various benefit structures with the CHIP policy; to add language required by the Centers for Medicaid and Medicare Services; and to allow the CHIP Board to adjust copayments, if necessary and subject to approval by the Director of Insurance, for prescription medication. Additionally, the amendments eliminate a plan that is not currently marketed and does not have any participants. The regulation was filed with the Secretary of State on August 19, 2008, with an implementation date of August 24, 2008.

210 NEB. ADMIN. R. & REG. 50 – RULES CONCERNING THE ADVERTISING OF LIFE INSURANCE AND ANNUITIES

The Advertising of Life Insurance and Annuities Regulation sets forth minimum standards and guidelines to assure full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts. The regulation is applicable for any life insurance or annuity advertisement intended for dissemination in Nebraska and provides that all advertisements created, designed or presented shall be the responsibility of the insurer as well as the producer creating the advertisement. In addition to providing specific form and content requirements for life and annuity advertisements, the regulation also requires insurers to establish a system of control over the content, form and method of dissemination of all advertisements for its policies as well as requiring all advertisements to be truthful and not misleading in fact or by implication. Insurers are required to clearly identify themselves in all advertisements for their products and shall be prohibited from using any symbol, word, or other item that would tend to mislead prospective insureds into believing that the solicitation is in some manner connected with a governmental program. Adopted amendments to the regulation reflect the changes made upon the National Association of Insurance Commissioners (NAIC) model regulation. The regulation was filed with the Secretary of State on June 23, 2008, with an implementation date of October 1, 2008.

210 NEB. ADMIN. R. & REG. 78 – MULTIPLE EMPLOYER WELFARE ARRANGEMENT

The Multiple Employer Welfare Arrangement (MEWA) Regulation establishes those rules and procedural requirements the Director deems necessary to carry out the Nebraska Multiple Employer Welfare Arrangement Act (See Neb.Rev.Stat. §§44-7601 to 44-7617). The amended regulation clarifies that only two members of a MEWA's Board of Trustees must now attest to the annual financial statement and certificate of compliance before said documents are remitted to the Department of Insurance. The regulation also provides that of the two members of the Board of Trustees attesting to the annual financial statement and certificate of compliance, one must be the chairperson or president of the Board of Trustees. The regulation was filed with the Secretary of State on October 1, 2008, with an implementation date of October 8, 2008.

210 NEB. ADMIN. R. & REG. 82 – MILITARY SALES PRACTICES

The Military Sales Practices regulation implements the provisions of Neb.Rev.Stat. §44-1534.01 granting the Director of Insurance rulemaking authority to adopt and promulgate rules and regulations to protect members of the United States Armed Forces from dishonest and predatory insurance sales practices, by declaring certain identified practices to be false, misleading, deceptive, or unfair as required by the federal Military Personnel Financial Services Protection Act, Public Law 109-290. The regulation sets forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices. The regulation was filed with the Secretary of State on October 2, 2008, with an implementation date of January 1, 2009.

210 NEB. ADMIN. R. & REG. 83 - PRENEED LIFE INSURANCE MINIMUM STANDARDS FOR DETERMINING RESERVE LIABILITIES AND NONFORFEITURE VALUES MODEL REGULATION

The Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values Model Regulation is a newly proposed regulation that establishes, for preneed insurance products, minimum mortality standards for reserves and nonforfeiture values. The regulation, based entirely upon a recently approved National Association of Insurance Commissioners (“NAIC”) model regulation, requires the utilization of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality Table in determining the minimum standard of valuation reserves and the minimum standard nonforfeiture values for preneed insurance products. Specifically, the regulation clarifies that insurers, with regard to preneed insurance contracts only, may choose to make use of the 2001 CSO Mortality Table in determining the minimum standard of valuation reserves and nonforfeiture values for preneed policies issued on or after January 1, 2009 and before January 1, 2012. If an insurer elects to use the 2001 CSO Table during that time frame, the insurer is required to provide sufficient notice to the commissioner/director of its state of domicile. For those preneed policies issued after January 1, 2012, all calculations of minimum forfeiture values and minimum reserves must utilize the 1980 CSO Mortality Table. The regulation was filed with the Secretary of State on October 7, 2008, with an implementation date of January 1, 2009.

Proposed Regulations

210 NEB. ADMIN. R. & REG. 56 – ANNUAL AUDITED FINANCIAL REPORTS

The Annual Audited Financial Reports regulation requires an annual audit by an independent certified public accountant (CPA) of the financial statements reporting the financial position and the results of operations. The proposed amendments to this regulation strengthen requirements related to the CPA independence and include new governance standards, primarily requiring that an insurer have an audit committee that is responsible for the appointment, oversight and compensation of the CPA. The proposed amendments also indicate that management of insurers with direct and assumed premium over \$500 million shall provide the Department with an assessment of its internal control over financial reporting. The amendments will bring the regulation into conformance with the National Association of Insurance Commissioners’ Model Audit Rule. The proposed amendments are expected to have an increased cost for the regulated industry. A public hearing on the proposed amendments to the regulation is scheduled for November 17, 2008.

210 NEB. ADMIN. R. & REG. 84 – MODEL REGULATION PERMITTING THE RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

The Model Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities recognizes, permits, and prescribes the use of mortality tables that reflect the differences in mortality between preferred and standard lives in determining minimum reserve liabilities of all ordinary policies of life insurance in accordance with Neb.Rev.Stat. §44-404 (a)(i)(c) and 210 Neb.Admin. R. & Reg. 71, sections 005.01 and 005.02. It permits the 2001 CSO Mortality Table to be split into preferred and residual classes. Additionally, it specifies the conditions for the use of the preferred rate structure tables in substitution for the 2001 Mortality Tables. A public hearing on the proposed regulation is scheduled for November 7, 2008.

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1779 Ann L. Johnson Omaha, NE	Violated <u>Neb.Rev.Stat. §§44-4059(1)(b)</u> . Violated an order of the director.	Order Producer license revoked 8/12/08
A-1780 Darrel Harris Omaha, NE	Hearing requested for reconsideration of denial of application for resident producer license.	Order Producer license granted 8/18/08
A-1781 Robert Reiser Omaha, NE	Hearing requested for reconsideration of denial of application for resident producer license.	Order Producer license granted 10/10/08
A-1782 William W. Peterson Nebraska City, NE	Violated <u>Neb.Rev.Stat. §§44-1525(11)</u> and 44- 4059(1)(b), (d), & (h). Failed to respond within 15 business days; violated any insurance law; improperly withheld, misappropriated or converted money; and used fraudulent, coercive or dishonest practices.	Consent Order \$1,500 admin. fine 8/15/08
A-1783 AON Consulting, Inc. Conshohocken, PA	Violated <u>Neb.Rev.Stat. §44-2615</u> . Acted as a consult without obtaining the proper license.	Consent Order \$1,000 admin. fine 8/15/08
A-1784 Phillip Trujillo Ft. Collins, CO	Violated <u>Neb.Rev.Stat. §§44-1525(11)</u> and 44- 4059(1)(b). Failed to respond within 15 business days; and violated any insurance law.	Order \$2,000 admin. fine 8/29/08

Actions Taken Against Producers (continued)

CAUSE NO.	ALLEGATION	DISPOSITION
A-1785 Leroy Verne Hileman, Jr. Steamboat Springs, CO	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b) & (h), and 44-4064. Violated any insurance law; demonstrated financial irresponsibility; failed to remit required licensing fees.	Order Producer license revoked 9/4/08
A-1786 A.G. Ventures, LLC, Precision Title Services, LLC, d/b/a Guardian Title Services, Machala Lynn Wulfin, Kenda Marler, & Thomas H. Penke Omaha, NE	Summary order to cease and desist from performing any acts relating to the business of insurance.	Cease and Desist Order 8/12/08 Kenda Marler Order Vacated 8/28/08
A-1787 Perry G. Kirk Callaway, NE	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(b). Violated an order of the director.	Order \$750 admin. fine; producer license suspended 9/30/08
A-1789 David M. Bosle Hastings, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) and 44-4059(1)(b). Failed to respond within 15 business days; and violated any insurance law.	Order \$1,000 admin. fine; producer license suspended 10/6/08
A-1790 Brian Samuel Tenner Salt Lake City, UT	Violated <u>Neb.Rev.Stat.</u> §§ 44-1525(11) and 44-4059(1)(b), (g) & (l). Failed to respond within 15 business days; violated any insurance law; committed unfair trade practice; and accepted insurance business from an unlicensed individual.	Order Producer license revoked 10/15/08
A-1791 James G. Ricker & J. Griffin Ricker & Associates Hilliard, OH	Violated <u>Neb.Rev.Stat.</u> §44-2615. Acted as a consultant without obtaining the proper license.	Consent Order \$500 admin. fine 10/8/08
A-1792 J R Insurance Agency & Joseph H. Standeven Farwell, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1524, 44-1525(11) and 44-4059(1)(b)&(g). Violated the Unfair Trade Practices Act; failed to respond within 15 business days; and violated any insurance law.	Order Producer license and agency license suspended 10/15/08
A-1793 Cory J. Christiansen Lincoln, NE	Violated <u>Neb.Rev.Stat.</u> §§44-1525(10) and 44-4059(1)(h). Made false or fraudulent statements on an application; and used fraudulent, coercive, or dishonest practices.	Consent Order \$1,000 admin. fine 10/15/08

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1689 & C-1696 Conseco Health Insurance Company Carmel, IN	Violated <u>Neb.Rev.Stat.</u> §§44-1540(2), (3),(8),(12) & (13) & Title 210 Ch. 61 §§ 006.01, 006.03, 007.01, 007.02, 008.01, 008.02. Violated the Unfair Insurance Claims Settlement Practices Act and Unfair Life, Sickness and Accident Claims Settlement Practices Rule.	Joint Consent Order \$25,500 admin. fine (See order for detailed requirements of company) 10/06/08
C-1715 Group Insurance Administrators, Inc. Havertown, PA	Violated <u>Neb.Rev.Stat.</u> §44-5814(1). Failed to file annual report.	Consent Order Certificate of authority suspended 8/29/08
C-1718 Washington National Insurance Company Carmel, IN	Violated <u>Neb.Rev.Stat.</u> §§44-710.03, 44-1525(11), 44-1540(1),(2),(3),(4), (8), and Title 210 Ch. 61 §§ 006.02, 007.01, 007.02, 008.02, & 008.03. Violated Unfair Trade Practices Act, Unfair Insurance Claims Settlement Practices Act; and Unfair Life, Sickness and Accident Claims Settlement Practices Rule.	Consent Order \$5,000 admin. fine 10/6/08

Public Hearing Set for Surcharge Contribution Rates of Qualified Health Care Providers

Pursuant to the Nebraska Hospital-Medical Liability Act, the Department will conduct a public hearing concerning the surcharge contribution rates of qualified health care providers to the Nebraska Excess Liability Fund for the year 2009.

The hearing will be held on Thursday, November 13, 2008, at 10:00 a.m., in the Fifth Floor Conference Room of the Terminal Building, 941 O Street, Lincoln, Nebraska 68508.

Court Cases

***Steffen v. Progressive Northern Ins. Co.*, 276 Neb. 378, 754 N.W.2d 730 (August 15, 2008)**

On November 17, 2003, Jeffrey Steffen was operating his tractor on Hwy. 84 west of Hartington, Nebraska. He was struck from behind by a westbound vehicle driven by an underinsured motorist, Mary Arens. The force of the impact ejected Steffen from his tractor, and he landed in the eastbound lane on Hwy. 84. Shortly after the collision, Lyle Hochstein approached the scene of the accident and, as he passed the two vehicles, his vehicle drove over Steffen. Steffen died at the scene of the accident. The parties stipulated that Steffen “died as a result of the injuries he sustained as a result of the collision between Arens' vehicle and his tractor.” Steffen's widow, Kathie, brought a breach of contract claim against Progressive Northern Insurance Company (Progressive), the underinsured motorist carrier for Steffen.

Steffen's tractor was not listed on the declarations page of the Progressive policy, and Kathie admitted the tractor was purchased prior to the policy period. Progressive denied the claim because the farm tractor Steffen was driving at the time of his death was not a “covered vehicle” under his policy with Progressive. Subsequently, Kathie settled her claim for policy limits against Arens, and then sued Progressive for breach of contract. The district court entered summary judgment for Progressive, concluding that the Progressive policy did not provide UIM coverage for operation of a farm tractor, and that the claim was barred by the statute of limitations.

On appeal, the Nebraska Supreme Court determined the district court erred in granting Progressive's motion for summary judgment and remanded the case for further proceedings. Read together, the provisions of the Uninsured and Underinsured Motorist Insurance Coverage Act mandate that an insured is entitled to recover for injuries sustained in any accident, so long as the injuries were caused by an underinsured motor vehicle or an uninsured motor vehicle. Neb.Rev.Stat. §§44-6401 et seq., 44-6413. The Court also held that the breach of contract claim brought by Kathie was not time-barred based on her failure to sue Arens before statute of limitations on a wrongful death claim against that motorist expired because she had settled with Arens before expiration of that limitations period. Neb.Rev.Stat. §44-6413(1)(e).

MARKET CONDUCT DIVISION

Market Conduct Exams Completed

Battle Creek Mutual Insurance Company
Catholic Relief Insurance Company
Medico Insurance Company
Medico Life Insurance Company
Norfolk Mutual Insurance Company

EXAMINATION DIVISION

Staff Update

Bruce Bornman has accepted the position of Investment Specialist. Bruce brings 32 years of knowledge and experience to this position, having been a financial examiner for 18 years and Assistant Chief Examiner of the Analysis Section for 14 years. Bruce was instrumental in the growth and development of the Analysis Section, implementing procedures that met or exceeded the NAIC accreditation standards.

Jeff Green has accepted the position of Assistant Chief Examiner and will be responsible for supervising the Analysis Section. Jeff has 18 years of experience with the Department, three years as a financial examiner and 15 years as an analyst.

Pre-Need Exams Completed During Third Quarter, 2008

Howser-Fillmer Mortuary, Co.

Financial Examinations Completed During Third Quarter, 2008

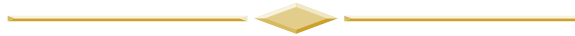
Farmers Mutual Insurance Company of Nebraska

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.



Department Calendar

November 11:	DOI Closed - Veteran's Day
November 27-28:	DOI Closed - Thanksgiving
December 25:	DOI Closed - Christmas Day
January 1:	DOI Closed - New Year's Day
January 19:	DOI Closed - Martin Luther King Day



State of Nebraska
Department of Insurance
941 O Street, Suite 400
Lincoln, Nebraska 68508

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